



Statement on Same–Sex Civil Marriage

February 14, 2006

Approved by the Jewish Community Relations Council of San Francisco, the Peninsula, Marin, Sonoma, Alameda and Contra Costa Counties

Preamble

The Jewish Community Relations Council of San Francisco, the Peninsula, Marin, Sonoma, Alameda and Contra Costa Counties has been asked by community members and organizations, public officials and others to consider taking a position on same-sex civil marriage. The mission of JCRC includes promoting an American society that is democratic, pluralistic and just. One of the JCRC's core values is *B'Tselem Elohim*—the belief that all people are created in God's image and accordingly each person's life is of infinite value. This principle leads JCRC to maintain that it is critical for equal opportunity to exist under the laws for every individual, and that there be no unlawful discrimination in any aspect of life, regardless of a person's race, creed, color, national origin, ancestry, religion, sex, age, disability, sexual orientation, gender identity or marital status.

The JCRC, consistent with the value it places on the importance of the family, advocates laws and public policies that protect, nurture and encourage stable family relationships and civil recognition of unions that foster them. In this regard, the welfare of children is of particular concern to the JCRC. They must be protected from discrimination and from the stigma that stems from discrimination against their parents.

Accordingly, we stand firmly in support of civil rights, including equal protection under the law and the separation of church and state. We believe that all persons are entitled to the full and equal enjoyment of all rights that the constitutions of our country and state secure. The question of whether the government should extend civil marriage to same-sex couples invokes these principles and values.

Statement

The JCRC acknowledges and respects the diversity of views within the Jewish community of the Bay Area on the issue of same-sex marriage. Both Jewish tradition and American values recognize the importance of respecting differing opinions and fostering debate over significant social issues. Many members of the Bay Area Jewish community have strongly held beliefs on this issue and there are divisions within and among the organized streams of Judaism about same-sex marriage. While we respect the beliefs of all the streams of Judaism in our community, we hold a strong commitment to the separation of church and state.

As a result, the JCRC will oppose any same-sex marriage laws or initiatives that would diminish the right or authority of any clergy or denomination to continue to make their own requirements with respect to religious marriages. In the end, JCRC's historic commitment to civil rights, social justice and compassion leads us to support the right of same-sex couples and their families to enjoy liberty and equal protection under the law, to oppose discrimination against gays, lesbians, bisexuals, transgender (LGBT) persons and same-sex couples and their families in the civil arena, and to support same-sex civil marriage on the basis set forth below.

In doing so, we affirm the distinction between civil and religious marriage. Legal recognition of same-sex civil marriage must not require clergy of any faith or denomination to perform the rites of marriage or recognize the religious status of civil same-sex marriages, consistent with the principle of the separation of church and state. Incorporating religious doctrine into legislation or into the California or United States Constitution would erode the separation of church and state, a cherished value that ensures religious liberty for the Jewish community and for people of all faiths and beliefs.

This statement in support of same-sex marriage is an extension of the JCRC's rationale for opposing the Knight Initiative in 2000—JCRC's longstanding history of opposing discrimination in any quarter. Discrimination against any group of people conflicts with core Jewish values. The JCRC opposes any legislation that creates an atmosphere of discrimination and hostility toward members of the LGBT community and same-sex couples. The JCRC supports same-sex couples and their families in their efforts to obtain "legal protection and security for their avowed commitment to intimate and lasting relationship(s)." The JCRC opposes legislation that results in the dissolution of already existing rights and benefits achieved by the gay and lesbian community. The JCRC also supports the right of members of the LGBT community and same-sex couples to become parents and to create and sustain families with children. The JCRC therefore opposes all discriminatory laws, regulations and practices in family law at local, state and federal level against members of the LGBT community and same-sex couples,

including those concerning adoption, surrogacy, custody, guardianship, and foster parenting.

We believe that one of the strongest arguments in favor of same-sex civil marriage is the benefits that this policy will confer on society as a whole. Our communities benefit when adults choose to share their lives with partners based on a loving, committed, long-term union that has equal dignity under the law. Individuals in such a union enjoy the benefits of shared resources and experiences, and provide sustenance and support for one another in times of stress. Their union serves to encourage their children and others to enter stable relationships. Same sex couples have proven to be effective and loving parents and foster-parents. Therefore, the JCRC supports the extension of civil marriage status to same-sex couples in the State of California and in other states. Furthermore, to accomplish this, the JCRC supports efforts to repeal existing legislation preventing such complete extension of rights.

Although California now allows same-sex couples to register as domestic partners with some significant legal protections, there remain critical differences between domestic partner benefits and the benefits that marriage bestows to heterosexual couples. These differences include the ownership and transfer of property, the right to file joint tax returns, and the rights to pension and social security benefits. There are an increasing number of states and foreign countries that have authorized civil marriage rights for same-sex couples, and we hope that civil marriage in California would allow full spousal rights for same-sex couples to be realized and transferred across state (and possibly national) boundaries. ([See appendix](#)).

In consideration of the foregoing, we have come to the conclusion that even if California were to change its laws to grant the same legal benefits to domestic partners and their families that opposite-sex married couples and their families enjoy, such State action would not be sufficient. Discrimination would still exist if the government continues to ban civil marriage for same-sex couples. There are two main reasons why such an outcome would create an untenable division of fundamental rights between same-sex and heterosexual couples, why *separate would not be equal*.

First, denying same-sex couples the right to enter into a civil marriage and relegating same-sex unions to a lesser type of recognition creates second-class citizen status. This denial of the social benefits of marriage is unacceptable discrimination in a just and pluralistic society. Furthermore, the dignity of the family is adversely affected; and, thus, the children are stigmatized. Second, under federal law and the law of most states, well over one thousand rights, responsibilities and privileges accrue only to married couples and their families exclusively. Legislation in our State that allows same-sex couples to

enter into domestic partnerships but does not permit civil marriage falls short of the goal of equal protection under the law for all persons. While adoption of same-sex civil marriage in California will not, in and of itself, achieve this goal, it is a necessary step. In the end changes in federal law are needed as well. Accordingly, the JCRC calls for the repeal of the Defense of Marriage Act at the federal level as well as the repeal of identical or similar laws that have been passed in 39 states.

Therefore, for all of the foregoing reasons, the JCRC supports civil same-sex marriage, so long as the laws providing for such rights respect the separation of church and state and do not require clergy of any faith or denomination to perform or recognize the religious status of same-sex marriage.

The JCRC will continue to oppose efforts to amend the State or Federal Constitutions—or otherwise change the laws—to bar civil marriage rites for same-sex couples, or to deny the legal benefits to same-sex couples and their families that opposite-sex couples and their families otherwise enjoy.

Appendix

Background

Civil marriage is a legislative construct that provides an array of fundamental legal rights and privileges and entails legal obligations as well. It is a deeply meaningful arrangement to individuals, families and the communities they live in. Civil marriage also represents an official status in our society that is cherished by married couples, their children and their families.

In California, the state government regulates civil marriage. The State establishes the rules and controls the procedures for local counties to grant civil marriage licenses. For the State to recognize a couple as validly married, the couple must obtain a civil marriage license that has been issued by the county registrar on forms prescribed by the State in accordance with California's marriage statutes. Only then does the couple have access to the full array of legal benefits and duties that come with civil marriage.

Since the year 2000, the JCRC has taken a position opposing various legislative initiatives that have defined—or sought to define—civil marriage as a legal union only between a man and a woman. In February 2000, the JCRC found consensus in the organized Jewish community, in opposing the so-called Knight Initiative (Proposition 22), which later was approved by the voters of our state. The Knight Initiative added a line to

California's Family Code providing that "only marriage between a man and a woman is valid or recognized in California." We are convinced that the initiative represented a serious step backward in the effort to eliminate discrimination. Based on this precedent, the JCRC also took a position in 2003 in opposing a proposed federal constitutional amendment that would have similarly defined marriage as only between a man and a woman.

In November 2003, the Massachusetts Supreme Court ruled in *Goodridge v. Department of Public Health* that Massachusetts' ban on same-sex marriage violated the state's constitution. The court held that the state may not "deny the protections, benefits and obligations conferred by civil marriage to two individuals of the same-sex who wish to marry" because of a clause in the state's constitution that forbids the "creation of second class citizens." The *Goodridge* decision followed a landmark U.S. Supreme Court ruling only a few months earlier in 2003—*Lawrence vs. Texas*, which held that state laws criminalizing same-sex behavior are unconstitutional. While the Court in *Lawrence* did not reach the issue of same-sex marriage, it overturned a 17-year precedent in finding that gay persons are "entitled to respect for their private lives" and that "the state cannot demean their existence or control their destiny" by criminalizing their private conduct.

On February 12, 2004, San Francisco's Mayor issued a directive that the City and County of San Francisco grant marriage licenses to same-sex couples, based on the City's determination that existing State statutes banning such unions were unconstitutional. Almost four thousand same-sex couples received marriage licenses from San Francisco. Following a legal challenge, the courts issued an order staying that practice. In August 2004, the California Supreme Court ruled that the marriage licenses granted by San Francisco were invalid. The ruling rested on narrow grounds, involving an interpretation of the State Constitution as not conferring on local officials the authority to refuse to enforce State statutes because they violate the Constitution. But the court did not reach the issue of whether the limitations on same-sex marriage under State statutes violated the equal protection clause or other provisions of the State Constitution.

In March 2004, the City Attorney, on behalf of the City and County of San Francisco, brought a constitutional challenge to provisions of the State's Family Code that restrict the institution of marriage to opposite-sex couples only. The City argued that those provisions violate the equal protection and due process clauses of the State Constitution and the right of privacy it grants to all Californians. Article 1, Section 1 of our Constitution provides that "[a]ll people are by nature free and independent and have inalienable rights," including "enjoying life and liberty" and "pursuing and obtaining safety, happiness and privacy." Section 7 provides that "[a] person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws" and that "[a]

citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens.”

San Francisco’s case was coordinated with later legal challenges by same-sex couples from San Francisco and Los Angeles. Absent a successful effort to change the State’s Constitution, the case is expected to decide the issue of equal civil marriage rights in California.

In March 2005, the San Francisco Superior Court ruled in this case that civil marriage should be extended to same-sex couples in California to avoid violating the equal protection clause of the State Constitution. The court found that the right to marry is a fundamental human right under California law and that the State statutes banning same-sex marriage failed the strict scrutiny test mandated by the equal protection clause. That decision is being appealed. In the meantime, the ruling has been stayed pending the outcome of the appeal. As a result, same-sex couples in this State cannot obtain civil marriage licenses. In the end, the State Supreme Court will likely decide the case. But because the Court rejected a request by all parties to the litigation to accept a direct appeal of the trial court’s decision, the State Supreme Court may not reach the issue for years.

In California, same-sex couples can register as domestic partners. These couples and their families have some, but not all, of the legal benefits that opposite-sex married couples and their families have. Among the significant rights that domestic partnership confers upon same-sex couples are many privileges that married couples have relating to intestate inheritance, community property, child custody, hospital visits and medical decision-making. But there remain a number of critical differences. For example, registered domestic partners do not have the same rights throughout the State as heterosexual couples regarding the ownership and transfer of property, the right to file joint tax returns, and the rights to pension and social security benefits. Nor do registered domestic partners have the same rights to pension and social security benefits as married couples do. These disparities can cause real harm to same-sex couples and their families, including their children.

In September 2005, the State Legislature approved a bill (AB849) that would have legalized same-sex marriage under state law. In particular, the bill would have revised the definition of marriage to remove the reference to gender, which was added to state law only in 1977. Shortly after the Legislature passed the bill, the Governor announced he would veto it, stating that the issue is best left to the courts and the voters, not the Legislature. Even if this bill or a similar one is later enacted, a legal challenge is almost

certain on the basis that the law violates the voter-adopted Knight Initiative. This issue would likely be tied up in the courts for years.

Meanwhile, the protections and benefits afforded to same-sex couples under domestic partnership and civil union laws are now under serious threat. In several states, including California, opponents of same-sex marriage and of gay rights are expected to engage in vigorous support of amendments that will codify in state constitutions—and possibly the federal constitution—a legal definition of civil marriage as exclusively between a man and a woman.

Moreover, many of those proposed amendments, including the initiatives proposed in California, will also make it illegal to continue to extend many or all rights, protections or benefits that the government currently grants to same-sex couples. In other words, they eliminate away hard-won rights as they now exist under domestic partner laws and reinstitute many aspects of harmful discrimination against gay and lesbian individuals and couples and their families.

On January 14, 2004, in light of the Massachusetts Supreme Court ruling in the *Goodridge* case that same-sex marriage should be recognized as a matter of civil rights and equal protection of the law, the JCRC of Greater Boston adopted a statement in support of civil same-sex marriage.

Massachusetts was the first state in the nation to allow same-sex couples to marry. While no other state allows same-sex marriage, five states in addition to California provide some of the legal benefits of civil marriage to same-sex couples through registered partnerships or civil unions. Those states are Maine, Vermont, Hawaii, New Jersey and Connecticut. In two of those states, Vermont and Hawaii, the laws were changed in response to decisions by their supreme courts that denying the legal benefits of marriage to same-sex couples violated equal protection rights guaranteed by the state constitution. There appears to be a trend around the world toward legislative recognition of same-sex civil unions. There are five countries—the Netherlands, Belgium, Canada, and most recently Spain and South Africa—that authorize civil marriage rights for same-sex couples. The laws of a number of other countries extend many of the legal benefits of marriage to same-sex couples.

The Defense of Marriage Act, or DOMA, is a federal law enacted in 1996. The law allows each state to deny any marriage-like relationship between persons of the same sex which has been recognized in another state. It also explicitly recognizes for purposes of federal law that marriage is “a legal union of one man and one woman as husband and wife” and by stating that spouse “refers only to a person of the opposite sex who is a

husband or a wife.” A same sex couple in California filed a federal lawsuit challenging DOMA’s provisions limiting marriage to heterosexual couples as unconstitutional. A U.S. District Court ruled that DOMA was constitutional, and that case is now on appeal before a U.S. Court of Appeals.

Civil unions, domestic partnerships and other forms of legal recognition for same-sex couples, which offer many but not all the rights accorded in a civil marriage, exist in various states besides California, including Connecticut, Hawaii, Maine, New Jersey and Vermont. In addition, Croatia, Denmark, Finland, France, Germany, Iceland, Israel, New Zealand, Norway, Portugal, Slovenia, Sweden, Switzerland and the United Kingdom, and regions of Australia, Brazil, and Argentina, offer same-sex couples some of the same legal rights and responsibilities as civil unions.